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IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

NO. 83-617

RICHARD WACHSMAN, ET AL.,
Petitioners,
VS.
CITY OF DALLAS, ET AL.,
Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

**BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

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TO THE HONORABLE JUSTICES OF SAID COURT:

The City of Dallas, Glen D. King, Chief of Police of the City of Dallas, and Dodd Miller, Fire Chief of the City of Dallas, submit the following brief in opposition to the petition for writ of certiorari.

REASON FOR DENYING THE WRIT

The petition should be denied because the decision of the court of appeals is not in conflict with the decision of another federal court of appeals.

SUMMARY OF ARGUMENT

Petitioners contend that the writ should be granted because the decision of the court of appeals is in conflict with the decision of the Court of Appeals for the First Circuit in *Magill v. Lynch*, 560 F.2d (1st Cir. 1977).

There is no conflict because the holding in *Magill* is limited to local elections in which political parties "play a large role", and political parties do not play a large role in Dallas city council elections.

ARGUMENT

Magill involved elections in which "the context has historically been partisan",¹ Democratic and Republican parties "regularly endorse candidates in the primary and general elections",² "endorsements are frequently solicited by candidates at party meetings",³ "the Democratic endorsement in particular is highly prized",⁴ "many regular Democratic workers who serve in partisan state-wide campaigns also give aid to endorsed Democratic candidates in city elections",⁵ the influence of political parties on city elections is "pervasive",⁶ and "parties are a continuing presence in political campaigns". *Magill* was *not* a case involving employee political activity "in the absence of substantial party involvement", but instead was decided in the context of local elections in which "... political parties play a large role in the campaign."⁷ The scope of the *Magill* holding and its

¹*Magill v. Lynch*, 560 F.2d 22, 26 (1st Cir. 1977).

²*Id.* at 26.

³*Id.* at 26.

⁴*Id.* at 26.

⁵*Id.* at 26.

⁶*Id.* at 26.

⁷*Id.* at 26.

⁸*Id.* at 29.

precedential effect are limited by the facts of that case and cannot extend beyond campaigns in which "political parties play a large role". Petitioners, of course, correctly contend that Dallas elections "... are nonpartisan and that the campaigns contain no substantial party involvement."¹⁰

⁹Id. at 29.

¹⁰Petition, at 6.

CONCLUSION AND PRAYER

Petitioners' arguments were carefully considered by the court of appeals, were rejected by a unanimous decision of the panel, and no circuit judge voted to grant petitioners' motion for rehearing. The decision of the court of appeals is not in conflict with the decision of another court of appeals, nor has the court of appeals decided this case in conflict with applicable decisions of this Court. This case does not merit review by this Court, and the petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of the foregoing brief were served by mail on
Kenneth H. Molberg, Attorney for petitioners, on the
..... day of November, 1983.

JOSEPH G. WERNER

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